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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

OAVIO KUCK, an individual,

Plaintiff,

v.

CANYONS AQUATIC CLUB, INC., a
California corporation; and OOES 1 through 20,
inclusive.

Defendants.

Case No.

COMPLAINT FOR

1. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY AGAINST WHISTLEBLOWER RETALIATION**
2. **VIOLATION OF LABOR CODE SECTION 1102.5**
3. **BREACH OF CONTRACT**
4. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
5. **NONPAYMENT OF WAGES (CAL. LAB. CODE §§ 201, 202, 218)**
6. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (CAL. LAB. CODE § 226)**
7. **FAILURE TO PAY WAGES UPON DISCHARGE (CAL. LAB. CODE §§ 201-203)**
8. **WAITING-TIME PENALTIES (CAL. LAB. CODE §§ 201-203)**

DEMAND FOR JURY TRIAL

1 Plaintiff David Kuck ("Plaintiff") hereby complains against Defendants Canyons Aquatic
2 Club, Inc. (the "Club") and Does 1 through 20, inclusive (collectively, "Defendants"), as follows:

3 INTRODUCTION AND SUMMARY OF CLAIMS

4 1. This lawsuit arises out Defendants' shameless campaign to silence Plaintiff—a swim
5 coach and whistleblower who persistently tried to persuade the Club to (a) protect its members from
6 a predatory fellow coach whose rampant verbal and sexual abuse of the Club's young athletes had
7 been largely ignored by the Club and its governing bodies (including USA Swimming and Southern
8 California Swimming); (b) comply with California labor laws that the Club had been systematically
9 violating for years; and (c) investigate and address discrepancies between the Club's bank records
10 and financial reports presented to the Board of Directors (the "Board"), of which Plaintiff was a
11 member. As the Club's Head Coach, Plaintiff personally observed coach Jeremy Anderson's
12 ("Anderson") abusive behavior toward certain members (including young swimmers and their
13 families), and diligently investigated Anderson's known history of inappropriate behavior towards,
14 and molestation and sexual abuse of, athletes. Plaintiff reported his concerns, verbally and in
15 writing, to the Club's Board (of which he was a member) and the governing bodies charged with the
16 oversight of the Club and protection of member athletes, in the hopes of garnering the Club's
17 support for Anderson's termination. The Club refused to terminate Anderson, however, instead
18 maintaining that it would only take such action when directed to do so by USA Swimming. Only
19 when the U.S. Center for SafeSport ("SafeSport") and the sheriff's department expressed grave
20 concerns regarding Anderson to the Club did the Club finally begin to acknowledge the danger that
21 Anderson posed to its young members and ultimately accede to Plaintiff's termination of Anderson.
22 Still, the Board barred Plaintiff from discussing the reasons for Anderson's termination after the fact,
23 which left much of the Club's membership in the dark, and allowed those Board members who had
24 long resisted Plaintiff's calls to oust Anderson to portray Plaintiff as having acted out of personal
25 animosity toward Anderson, which undermined Plaintiff in his roles as Head Coach and Board
26 member. Only a year and a half later—after Anderson had been investigated by the authorities and
27 criminally charged, then fled the country, only to be apprehended in Costa Rica before dying while
28 in custody—did the Club begin to grapple with questions about how the abuse could have gone on
29 so long. When Plaintiff identified the Club's failures to monitor, report, and timely respond to
30 misconduct as fostering an environment where abuses could continue, Plaintiff suffered an
31 immediate backlash from staff, parents, and other Board members.

32 2. The Club's adverse treatment of Plaintiff only became more pronounced over time, as
33 the Board resisted Plaintiff's urging the Board to bring the Club's employment practices into

1 compliance with California labor law (including the proper classification of, record-keeping for, and
2 compensation of hourly employees), to observe corporate formalities (like preparing a budget and
3 regular financial statements, and filing required documents with the California Secretary of State),
4 and to look into discrepancies between the Club's bank records and financial reports presented to the
5 Board. The Club denied Plaintiff the full bonus compensation and payment of health insurance
6 benefits to which he was entitled under his employment contract, excluded him from communication
7 regarding the Club's operations, sought to remove him from the Board, and ultimately, in July 2019,
8 terminated him without explanation. At the same time, the Club summarily terminated Plaintiff's
9 wife, who was also employed by the Club, and the memberships of the couple's three children.
10 Plaintiff and his wife suddenly found themselves out of work, their family expelled from the
11 swimming community that they had moved across the county to join and serve, and facing difficult
12 financial circumstances. By this action, Plaintiff seeks redress for the Club's wrongful termination
13 of him, brazenly carried out in retaliation for his reporting of systematic unlawful conduct, and for
14 the Club's denial of the financial benefits to which he was entitled under his employment agreement.

15 JURISDICTION AND VENUE

16 3. This Court has subject matter jurisdiction over this dispute because Plaintiff brings
17 claims under the statutory and common law of the State of California for acts occurring in this
18 jurisdiction. This Court has general personal jurisdiction over Defendants because each is a citizen
19 and resident of the State of California, and/or regularly conducts business in the State of California.

20 4. Venue is proper in this Court pursuant to California Code of Civil Procedure section
21 395 et seq., because the acts and omissions alleged in this Complaint took place, and Plaintiff
22 suffered damages, in the State of California, County of Los Angeles.

23 THE PARTIES

24 5. Plaintiff David Kuck ("Plaintiff") is, and at all relevant times was, an individual
25 residing in the State of California, County of Los Angeles.

26 6. Plaintiff is informed and believes and based thereon alleges that Defendant Canyons
27 Aquatic Club, Inc. (the "Club") is, and at all relevant times was, a California corporation, with its
28 principal place of business in the State of California, County of Los Angeles, located at 26455
29 Rockwell Canyon Road, Santa Clarita, California 91355.

30 7. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
31 Does I through 20, inclusive, and therefore sues those Defendants by such fictitious names. Plaintiff
32 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
33 informed and believes and thereon alleges that each of the fictitiously named Defendants is

1 responsible in some manner for the occurrences herein alleged. and that Plaintiff's damages as
2 alleged herein were proximately caused by those Defendants.

3 8. Plaintiff is informed and believes and thereon alleges that at all times material to this
4 Complaint, each Defendant, whether expressly or fictitiously named, in addition to acting for
5 himself, herself, or itself and on his, her, or its own behalf individually, is and was acting as the
6 agent, servant, employee, partner, joint-venturer, or representative of, and with the knowledge,
7 consent, and permission of, and in conspiracy with, each and all of the Defendants and within the
8 course, scope, and authority of that agency, service, employment, partnership, joint venture, and
9 conspiracy. Plaintiff further alleges on information and belief that the acts of each of the Defendants
10 were fully ratified by each and all of the Defendants. Specifically, and without limitation, Plaintiff
11 alleges on information and belief that the actions, failures to act, breaches, and conspiracy alleged
12 herein and attributed to one or more specific Defendants were approved, ratified, and done with the
13 cooperation and knowledge of each and all of the Defendants.

14 GENERAL ALLEGATIONS

15 9. Plaintiff has nearly three decades of experience as a swim instructor and coach. He
16 fell in love with the sport as a child and swam competitively through his early youth, high school,
17 and college. He began swim instruction and coaching at the age of 14 and has continued that work
18 for the 28 years since then. He earned a college degree in Physical Education and Leisure
19 Management from The Ohio State University, where he was a four-year Big Ten Championship
20 finalist. He has coached 8 competitive teams and has run about as many swim instruction programs.
21 He has taught swimmers at all levels, from introductory instruction through the training of multiple
22 Olympic gold medalists. Plaintiff's prior experience includes working as the North Senior Lead
23 Coach and Masters Coach at SwimMAC in Charlotte, North Carolina.

24 10. In 2017, Plaintiff learned that the Club had an opening for the position of Head
25 Coach. He applied for the position, and following two telephone interviews and an in-person
26 interview in Santa Clarita, California, was offered—and accepted—the position. At that time,
27 Plaintiff and his family were living in Charlotte, North Carolina.

28 11. On or about July 12, 2017, Plaintiff entered into a written employment agreement
29 with the Club (the "Employment Agreement"). The Employment Agreement provided that Plaintiff
30 would occupy the position of the Club's Head Coach, and that Plaintiff would also be a member of
31 the Club's Board.

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12. The Employment Agreement provided, among other things, as follows:
- a. That the Club would pay Plaintiff a base salary at a gross annual rate of \$90,000.00.
 - b. That the Club would pay Plaintiff an annual bonus equal to ten percent (10%) of Plaintiff's base salary (i.e., \$9,000.00) no later than December of each year.
 - c. That the Club would pay Plaintiff thirty percent (30%) of the Club swim school's profits calculated on an annual basis, subject only to Plaintiff's continuous service through each fiscal year, to be paid no later than December of each year.
 - d. That the Club would provide Plaintiff and his family paid medical benefits upon commencement of his employment.

13. On or about August 17, 2017, Plaintiff arrived in Santa Clarita, California, having moved his family from Charlotte, North Carolina so that Plaintiff could start work at the Club. In accordance with the terms of the Employment Agreement, Plaintiff commenced full-time employment on or about August 21, 2017. In his capacity as Head Coach, Plaintiff was ultimately responsible for the Club's instruction and coaching of 800-1,000 individuals per year, including without limitation children as young as 4 years old just learning to swim, as well as competitive swimmers primarily between the ages of 7 and 18.

14. After taking over as the Club's Head Coach, Plaintiff became aware of certain behavior on the part of Anderson, another coach, that deeply concerned him. Plaintiff observed Anderson's verbal abuse of swimmers and their families, and over time learned of Anderson's sexual abuse of, and other inappropriate behavior toward, younger male athletes, often when Anderson was alone with them in isolated areas of Club buildings, in his car, or on camping trips. Plaintiff reported Anderson's behavior to the Club's Board on numerous occasions, in the hope that the Club would take action to protect its members by removing Anderson from his position. The Club, however, consistently resisted Plaintiff's efforts, and insisted that it would not act without direction or guidance from USA Swimming, the national governing body for the sport of swimming in the United States.

15. In August 2017, very shortly after Plaintiff's employment began, Plaintiff observed Anderson verbally assaulting a family at the Club. Plaintiff later learned that the family had previously reported Anderson's behavior but was warned to back off or else the Club would strip them of their membership privileges. Plaintiff personally observed further instances of Anderson's abusive behavior toward other families in the weeks thereafter.

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1 16. Anderson's pattern of abuse prompted Plaintiff to have a meeting with Anderson, in
2 early September 2017, to express his concerns and lay out a plan for the improvement of Anderson's
3 behavior. Plaintiff presented Anderson and the Board with a written memorialization of that
4 meeting.

5 17. In October 2017, Plaintiff and the Board's then-President, Garry Helgeson
6 ("Helgeson"), held a meeting regarding Anderson's misconduct. Notwithstanding Plaintiff's
7 reporting (including in writing) of Anderson's inappropriate behavior, Helgeson refused to support
8 Anderson's removal, instead issuing him a warning.

9 18. Throughout October and November of 2017, a number of the swimmers' parents met
10 directly with Plaintiff to discuss voicing their concerns about Anderson to governing bodies that
11 oversee the Club, given the Club's history of inaction in response to previous complaints. Up to that
12 point, most of the member families had been afraid to go on record, for fear of retaliation by the
13 Club and coaching staff. A small group of parents agreed to prepare written statements regarding
14 their observed instances of Anderson's misconduct. Armed with those written statements, Plaintiff
15 contacted Kim O'Shea ("O'Shea"), the Executive Director of Southern California Swimming, a local
16 swimming committee affiliated with USA Swimming.

17 19. On or about November 15, 2017, Plaintiff met with O'Shea to discuss the Board's
18 unwillingness to terminate Anderson and to seek O'Shea's advice about how to proceed in the
19 absence of Board support. O'Shea suggested that Plaintiff contact Susan Woessner ("Woessner"), a
20 senior director of SafeSport, an independent nonprofit committed to ending abuse in sport. A
21 troubling, anonymous report had been made that same day of Anderson helping a young boy put on
22 his swimsuit. Through his contact with Woessner, Plaintiff served as a conduit for families to share
23 their past experiences with Anderson and present specific instances of misconduct. Plaintiff also
24 contacted the Club's former Head Coach, Coley Stickels ("Stickels"), to learn about complaints
25 regarding Anderson that were made prior to and during Stickels' tenure, and then connected
26 Woessner and Stickels so that SafeSport could record that additional information.

27 20. Plaintiff continued to communicate with the Club's former coaches to further
28 investigate Anderson's prior misconduct. Through those discussions, Plaintiff learned that
29 Anderson, on multiple occasions, had been seen alone with young male swimmers in private areas of
30 rental buildings and in Anderson's car. Plaintiff also learned that Anderson had taken a group of
31 boys on a camping trip, during which it is believed that he had inappropriate contact with one of the
32 boys, although the former coach was unable to determine precisely what had happened because the
33 boy and his mother declined to discuss the matter on the record.

21. On or about December 5, 2017, Plaintiff sent the Board another email reiterating his discomfort with Anderson's presence around team members.

22. The following day, December 6, 2017, a former Board member, Mark Osowski ("Osowski"), replied to Plaintiff's email (without copying other Board members) to share his knowledge of additional past incidents involving Anderson. Osowski indicated that USA Swimming was aware of those incidents, but had refused to act because the complainants were anonymous. On or about that same date, the Club announced the addition of two new Board members, Carole Horst ("Horst") and Jason Grant ("Grant"). Grant, in particular, was closely aligned with Anderson, which signaled the Board's further resistance to removing Anderson. While other Board members acknowledged that Plaintiff's concerns regarding Anderson (as reiterated in Plaintiff's December 5, 2017 email) appeared to be legitimate, the Board again chose not to take immediate action.

23. Throughout December 2017, Plaintiff communicated with O'Shea and Woessner, seeking prompt action by Southern California Swimming or SafeSport that would, in turn, convince the Board to suspend or terminate Anderson. Yet neither Southern California Swimming nor SafeSport took any decisive action to prompt the Board's suspension or termination of Anderson.

24. In or around mid-December 2017, SafeSport received a formal complaint that led Woessner to contact the Santa Clarita Sheriff. Woessner advised Plaintiff that imminent action was likely at College of the Canyons, where the Club was based. Plaintiff notified the Board that he would no longer delay acting to protect the Club's young swimmers. Although the Board members indicated that they would no longer stand in Plaintiff's way, they insisted that Plaintiff refrain from terminating Anderson before Christmas, so as not to appear heartless. The Board members steadfastly refused to join Plaintiff when it came time to notify Anderson of his termination, until on or about December 27, 2017, when another Board member, John Morici ("Morici"), agreed to accompany Plaintiff. That afternoon, Plaintiff, accompanied by Morici, terminated Anderson.

25. Pursuant to the Employment Contract, Plaintiff was entitled to an annual incentive bonus, calculated as thirty percent (30%) of the swim school's profits, as well as a separate annual bonus of ten percent (10%) of his base salary, both to be paid no later than December of each year. Despite the Club's confirmation that Plaintiff was to receive those bonuses in December 2017, the Club failed to pay Plaintiff those bonuses, with the exception of one annual bonus paid belatedly in or about June 2019.

26. On or about January 3, 2018, Woessner notified Anderson and the Board that USA Swimming had commenced an investigation of Anderson's misconduct. Despite that notification, the Board mandated that Plaintiff remain silent as to the reasons for Anderson's termination for fear

1 of attracting lawsuits or prompting additional victims to come forward. Plaintiff hosted multiple
2 staff meetings where he was precluded from revealing any information regarding Anderson's
3 termination, which created the appearance that Anderson had been fired either for no reason or
4 because Plaintiff personally did not like him. That misimpression caused Plaintiff to lose staff
5 support, and influential parent members and athletes began protesting Anderson's firing. In the
6 months that followed, Plaintiff and his family found themselves increasingly under fire from staff,
7 parents, and youth—a result of being forbidden by the Board from explaining the circumstances
8 surrounding Anderson's firing.

9 27. In addition to Plaintiff's reporting of Anderson's rampant misconduct and abuse, he
10 also observed and reported to the Board the Club's failure and refusal to comply with California law
11 in several material respects, with the goal of having the Board take corrective action. In or about
12 February 2018, Plaintiff raised with the Board that the Club's hourly employees had been working
13 overtime (including weekends and 10-hour shifts), yet those same employees were not being paid
14 overtime wages in compliance with California law. Plaintiff proposed that the Board seek further
15 advice in order to appropriately address this issue, including the potential reclassification of
16 employees in accordance with the Labor Code. Plaintiff's concerns were largely disregarded. In
17 monthly Board meetings that followed, Plaintiff reiterated his concerns, and each time, his concerns
18 were disregarded. In June 2018, Plaintiff suggested installing time clocks that would allow
19 employees to record their hours worked, because Plaintiff had no ability to track or confirm reported
20 employee hours. Plaintiff's suggestion was not pursued.

21 28. Plaintiff also sought to have the Board direct the Club to observe corporate
22 formalities, including those required under California law, but was likewise met with resistance on
23 that front, and instead instructed to stick to "wet side responsibilities." Beginning in February 2018,
24 and at each Board meeting that followed, he asked that the Board prepare a budget, as well as regular
25 financial statements. Plaintiff's requests were denied.

26 29. In April 2018, a number of inappropriate text messages from Anderson were
27 discovered on a young athlete's telephone. The athlete's mother took his phone to the police and
28 contacted the Board. The chain of text messages between Anderson and the boy revealed the names
29 of other athletes who had apparently been victimized by Anderson. That discovery in Spring 2018
30 revealed to membership that Anderson's behavior was a widespread problem and not limited to
31 isolated incidents. As a result, more and more young athletes and their families became willing to
32 share their personal experiences with investigators. Plaintiff later learned, through the police
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1 investigation, that Anderson's abuse affected many young boys at the Club, some of whom were
2 willing to testify, and others who were not willing to do so.

3 30. In May 2018, amidst growing complaints from membership, the Club held two
4 general meetings. In one meeting (for families with athletes aged 13 years or younger), Plaintiff
5 answered a question regarding Anderson's termination during which he stated that he had been
6 investigating Anderson's misconduct since Fall 2017, that Anderson's misconduct was the reason
7 for his termination, and that a police investigation of Anderson was underway.

8 31. In December 2018, as was the case in 2017, the Club again failed to pay Plaintiff the
9 10% annual and 30% incentive bonuses to which he was entitled. Helgeson, then-President of the
10 Board, and Grant, the Treasurer, advised Plaintiff that they intended to change the process of
11 calculating bonuses, and that under the new method, Plaintiff would not be receiving any bonus.
12 Notably, the Board continued to use its original methods of calculation of bonuses for other
13 employees. In or around early January 2019, Plaintiff notified the Board's new President, Horst, in
14 writing, of the material breaches of his Employment Contract, yet the Club failed to cure those
15 breaches, with the exception of one annual bonus belatedly paid in June 2019.

16 32. In January 2019, the Club stopped paying for Plaintiff's health insurance, in violation
17 of the Employment Agreement.

18 33. In late-January 2019, Plaintiff learned that the Los Angeles County District
19 Attorney's office was criminally prosecuting Anderson, and that a warrant was issued for his arrest.

20 34. After several months of the Club's insurance carrier having notified the Club of its
21 failure to pay employee health insurance costs, Plaintiff's health insurance was cancelled, without
22 notification to Plaintiff, in March 2019.

23 35. In April 2019, Plaintiff learned that the Club's corporate status had been suspended
24 by the California Secretary of State, and that the Club had unpaid fees and bills. Plaintiff sought to
25 have the Board address these issues, along with the labor practices that he had flagged for correction
26 on numerous prior occasions and demanded that the Board create a human resources body to
27 actively address those and other concerns. Although the Board did temporarily create such a human
28 resources body, which confirmed Plaintiff's existing concerns and identified additional ones, the
29 Board failed to take corrective action prior to Plaintiff's termination.

30 36. In June 2019, Anderson, who had successfully evaded the authorities for six months,
31 was apprehended in Costa Rica. Before he could be extradited to the United States, however,
32 Anderson was hospitalized in Costa Rica, and died while in custody.

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37. Shortly after Anderson's capture and demise, the Club sent a brief email to its membership merely notifying them of Anderson's death, without providing any further information regarding the circumstances surrounding Anderson's termination from the Club or the criminal investigation of Anderson. Given this lack of substantive information in the Club's email, Plaintiff felt compelled to send a further email offering some additional context. The Club's members were shocked that Anderson's behavior had gone on for years without the Club taking action to stop it. At least one staff member suggested that although he was aware of Anderson's generally abusive behavior and had not reported it, he was unaware of any sexual abuse. Other staff admitted to having refrained from reporting Anderson's behavior (including suspected sexual misconduct).

38. On or about the same date as the announcement of Anderson's death, three of the Board members—Horst, Grant, and Scott Blietz ("Blietz")—met surreptitiously, without notifying Plaintiff or the other remaining board member, Vance Brower ("Brower"), to appoint a new Board member, Sachi Yokoyama ("Yokoyama"). Immediately thereafter, Plaintiff was effectively removed from Board. When he sought to confirm whether he had indeed been removed from the Board and stripped of his voting rights, he received no reply. From that point forward, Plaintiff was removed from all staff emails.

39. In July 2019, in response to several instances of bullying and other athlete misconduct that were brought to Plaintiff's attention, Plaintiff reiterated his view that the previous failures to report, monitor, and address Anderson's abuse appeared to have created a culture of non-reporting of abuse and inaction, which was unacceptable. Plaintiff's statement triggered angry responses from staff members who were responsible for supervising and responding to the misbehavior at issue.

40. Also in July 2019, Plaintiff identified a number of financial discrepancies in the Club's bank records. Plaintiff's credit card for business expenses had been declined on several occasions, yet the funds in the account were simultaneously being depleted. Plaintiff also observed that the posted balance in that account as of the end of May 2019 was \$55,000.00 less than what had been reported at the Board's June 2019 meeting. Plaintiff reported this discrepancy to Board members Horst and Brower, expressing concern about possible financial malfeasance, to no avail. Further, when Plaintiff expressed his concerns about ongoing abuse and the possibility of financial malfeasance to George Ward ("Ward"), USA Swimming's Director of Risk Management, Ward suggested to Plaintiff that he should leave and start his own swim club.

41. On July 15, 2019, Horst, Grant, Blietz, and Yokoyama notified Plaintiff that he was being terminated from his position as Head Coach and handed Plaintiff a letter confirming his termination, effective immediately. The Club did not offer Plaintiff any explanation for its

1 termination decision, at that time or any time thereafter. The Board sent an additional letter to
2 Plaintiff demanding that he stay away from the Club's practices and pool deck, and advising that
3 Plaintiff's wife, Heather Kuck, who had also been employed as a swim coach at the Club for
4 approximately one year, was also being relieved of her duties. The Club did not directly notify Ms.
5 Kuck—at any time—that she was being terminated. The Club also terminated the memberships of
6 Plaintiff's three children, without explanation. At the time of his termination, the Club did not
7 present Plaintiff with his final paycheck, pay him the bonuses or the unused vacation time that he
8 was owed, or issue a final wage statement. In contrast to what the Club told Plaintiff privately, i.e.,
9 that he was being terminated, the Club publicly stated that it "made the decision not to extend
10 [Plaintiff's] contract."

11 FIRST CAUSE OF ACTION

12 **Wrongful Termination In Violation Of Public Policy**

13 **(California Labor Code § 1102.5)**

14 **(Against All Defendants)**

15 42. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

16 43. The public policy of the State of California, as provided by statute (e.g., California
17 Labor Code section 1102.5), prohibits retaliation on the basis of an employee's disclosing
18 information of, or refusing to participate in, an unlawful act.

19 44. Defendants' termination of Plaintiff is in violation of the policy of the State of
20 California identified above, because Plaintiff's disclosure of information regarding an unlawful act
21 to a person with authority to investigate, discover, or correct the violation, and/or refusing to
22 participate in the unlawful act, was a substantial motivating reason for Plaintiff's termination. By
23 way of example, Plaintiff's reporting of Anderson's abuse and related misconduct (and the Club's
24 failure to address it), the Club's apparent failure to comply with the California Labor Code with
25 respect to the classification and compensation of its employees, the discrepancies between the Club's
26 bank records and financial reports presented to the Board, and/or the Club's failure to observe
27 corporate formalities required under California law, was a substantial motivating reason for the
28 Club's termination of Plaintiff's employment.

29 45. As a result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff
30 has suffered monetary damages in sums according to proof.

31 46. As a proximate result of Defendants' termination of Plaintiff's employment in
32 violation of the fundamental public policy of the State of California, Plaintiff has suffered and
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continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

47. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees in connection with pursuing this claim for wrongful termination, and is entitled to recover reasonable attorneys' fees and costs in an amount according to proof.

48. Defendants' conduct was intended to harm Plaintiff and did harm him. Defendants' conduct was willful, wanton, and malicious, and Defendants are guilty of malice, oppression, and/or fraud. Defendants' conduct warrants an assessment of punitive and exemplary damages in an amount appropriate to punish Defendants, to deter Defendants from engaging in further acts of this nature, and to make an example of Defendants in the community such that others will not engage in similar misconduct in the future.

SECOND CAUSE OF ACTION

Violation Of California Labor Code § 1102.5

(Against All Defendants)

49. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

50. California Labor Code section 1102.5 prohibits an employer from retaliating against any employee for disclosing information of, or refusing to participate in, an unlawful act.

51. Defendants believed that Plaintiff had disclosed to a person with authority to investigate, discover, or correct the violation (i.e., the Club, its Board, SafeSport, Southern California Swimming and/or USA Swimming), and/or might further disclose, Anderson's abuse and related misconduct (and the Club's failure to address it), the Club's apparent failure to comply with the California Labor Code with respect to the classification and compensation of its employees, the discrepancies between the Club's bank records and financial reports presented to the Board, and/or the Club's failure to observe corporate formalities required under California law. Defendants further understood that Plaintiff refused to participate in the foregoing unlawful conduct.

52. At the time that Plaintiff voiced his concerns to the Club, Board and others, he had reasonable cause to believe that Anderson and the Board's conduct constituted violation(s) of law. Plaintiff repeatedly expressed his concerns, verbally and in writing, that Anderson was engaged in unlawful abuse of young athletes and that the Club had a duty to remove him, that the Club's employment practices failed to comply with California law, and that there were troubling discrepancies between the Club's bank records and financial reports that could be a sign of financial malfeasance.

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53. Defendants took adverse employment actions against Plaintiff, including failing to pay for his health insurance in violation of his Employment Agreement, stripping him of his Board seat and corresponding voting rights, and ultimately terminating his employment.

54. Plaintiff's disclosure of Anderson's abuse (and the Board's failure to remove Anderson from his position with the Club on that basis), the Club's failure to follow California labor laws and investigate possible financial malfeasance, and his refusal to participate in the unlawful activity, were contributing factors in Defendants' decision to take adverse employment actions against Plaintiff, including but not limited to his termination.

55. As a result of Defendants' termination of Plaintiff's employment, Plaintiff has suffered monetary damages in sums according to proof.

56. As a proximate result of Defendants' willful, knowing, and intentional violations of California Labor Code section 1102.5, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

57. Defendants' conduct was intended to harm Plaintiff and did harm him. Defendants' conduct was willful, wanton, and malicious, and Defendants are guilty of malice, oppression, and/or fraud. Defendants' conduct warrants an assessment of punitive and exemplary damages in an amount appropriate to punish Defendants, to deter Defendants from engaging in further acts of this nature, and to make an example of Defendants in the community such that others will not engage in similar misconduct in the future.

58. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees in connection with pursuing this claim for whistleblower retaliation. Pursuant to California Code of Civil Procedure sections 1021.5 and 1032 et seq., Plaintiff is entitled to recover reasonable attorneys' fees and costs in an amount according to proof.

THIRD CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

59. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

60. Plaintiff and the Club entered into a written contract governing, among other things, Plaintiff's employment and compensation—i.e., the Employment Agreement. The Employment Agreement provided, among other things, that Plaintiff would occupy the position of the Club's Head Coach and be a member of the Board. It further provided that the Club would pay Plaintiff a base salary at a gross annual rate of \$90,000.00, an annual bonus equal to ten percent (10%) of

1 Plaintiff's base salary (i.e., \$9,000.00) by December of each year, and an incentive bonus equal to
2 thirty percent (30%) of the Club's swim school profits calculated on an annual basis, subject only to
3 Plaintiff's continuous service through each fiscal year, also to be paid no later than December of
4 each year. Under the Employment Agreement, the Club was also obligated to provide Plaintiff and
5 his family paid medical benefits.

6 61. Plaintiff performed all, or substantially all, of his obligations under the Employment
7 Agreement, except to the extent that his performance of any obligation was excused.

8 62. Any and all conditions that were required for the Club's performance of its
9 obligations under the contract were satisfied, waived, or excused.

10 63. The Club breached the Employment Agreement by, among other things, (a) failing to
11 pay Plaintiff the compensation to which he was entitled, including but not limited to his 10% annual
12 bonus and 30% incentive bonus; and (b) failing to provide Plaintiff and his family paid medical
13 benefits.

14 64. As a proximate result of the Club's breaches of the Employment Agreement, Plaintiff
15 has suffered damages in an amount to be proven at trial.

16 FOURTH CAUSE OF ACTION

17 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

18 **(Against All Defendants)**

19 65. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

20 66. Plaintiff and the Club entered into a written contract governing, among other things,
21 Plaintiff's employment and compensation—i.e., the Employment Agreement.

22 67. Implied into every agreement, including the Employment Agreement between
23 Plaintiff and the Club, is a covenant of good faith and fair dealing that neither party to the agreement
24 will do anything to injure the rights of the other to receive the benefits of the agreement.

25 68. Plaintiff performed all, or substantially all, of his obligations under the Employment
26 Agreement, except to the extent that his performance of any obligation was excused.

27 69. Any and all conditions that were required for the Club's performance of its
28 obligations under the contract were satisfied, waived, or excused.

29 70. The Club unfairly interfered with Plaintiff's right to receive the benefits of the
30 Employment Agreement. Among other things, the Club purported to unilaterally change the process
31 of calculating incentive bonuses—in violation of the Employment Agreement—and claimed that
32 under the new method, Plaintiff would not receive any bonus.

71. As a proximate result of the Club's breaches of the implied covenant of good faith and fair dealing, Plaintiff has suffered damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Nonpayment of Wages (Cal. Lab. Code §§ 201, 202, 218)

(Against All Defendants)

72. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

73. Plaintiff alleges that Defendants owe him unpaid wages—including but not limited to the bonuses to which Plaintiff was entitled.

74. Pursuant to the terms of his Employment Agreement, Plaintiff performed work for Defendants.

75. Under the terms of Plaintiff's Employment Agreement, Defendants owe Plaintiff wages for all of the work that he performed, including but not limited to the bonuses to which he was contractually entitled.

76. Defendants owe Plaintiff unpaid wages in an amount to be determined at trial.

77. As a result of Defendants' conduct, Plaintiff has been damaged in an amount according to proof, including without limitation lost compensation and penalties.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226)

(Against All Defendants)

78. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

79. Labor Code section 226(a) requires an employer to provide accurate wage statements to an employee. Plaintiff was a non-exempt employee, entitled to protections under the Labor Code and applicable Industrial Wage Orders. At all relevant times, Defendants failed to provide any, let alone accurate, properly itemized, wage statements to Plaintiff as required by Labor Code section 226.

80. Plaintiff suffered injury as a result of Defendants' knowing and intentional failure to provide him with properly itemized wage statements as required by law.

81. Labor Code section 226(e)(1) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

82. As a proximate result of Defendants' conduct, Plaintiff has incurred and continues to incur and is therefore entitled to recover penalties pursuant to the Labor Code and reasonable attorneys' fees in order to enforce his rights and to obtain benefits due to him, all to his further damage in an amount according to proof.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages Upon Discharge (Cal. Lab. Code §§ 201-203)

(Against All Defendants)

83. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

84. Labor Code section 201(a) provides: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

85. Defendants violated Labor Code section 201 when Defendants failed to pay all wages due to Plaintiff at the time of his termination. To date, Defendants have not paid all wages due and owing to Plaintiff.

86. As a proximate result of Defendants' conduct, Plaintiff has incurred and continues to incur and is therefore entitled to recover unpaid wages, waiting penalties pursuant to Labor Code section 203, penalties and damages permitted by the Labor Code, interest under the Labor Code, necessary and reasonable attorneys' fees in order to enforce his rights and to obtain benefits due to him, all to his further damage in an amount according to proof.

87. Defendants' failure to pay Plaintiff's wages due and owing was willful because Defendants have failed to pay portions of the amounts due and owing to Plaintiff, despite Defendants' knowledge of the illegality of failing to pay Plaintiff's wages and promises to pay.

88. Pursuant to Labor Code section 203, Plaintiff is entitled to wages at his same rate of pay until paid or until suit is filed, for a period of up to thirty (30) days.

EIGHTH CAUSE OF ACTION

Waiting-Time Penalties (Cal. Lab. Code §§ 201-203)

(Against All Defendants)

89. Plaintiff re-alleges Paragraphs 1 through 41 as if set forth fully herein.

90. Labor Code sections 201 and 202 require that Defendants pay employees all wages due immediately if Defendants discharge an employee, and within 72 hours if an employee quits his or her employment. Labor Code section 203 provides that if an employer willfully fails to timely pay such wages, then the employer must, as a sanction and amount owed, continue to pay that employee's wages until the back wages are paid in full or an action is commenced, not exceeding thirty (30) days.

91. Defendants violated Labor Code section 201 when Defendants failed to pay all wages due to Plaintiff at the time of his termination on or about July 15, 2019. To date, Defendants have not paid all wages due and owing to Plaintiff.

92. Defendants' failure to pay Plaintiff's wages due and owing was willful because Defendants have failed to pay any portion of the amounts due and owing to Plaintiff, despite Defendants' knowledge of the illegality of failing to pay Plaintiff's wages and promises to pay.

93. Pursuant to Labor Code section 203, Plaintiff is entitled to wages at his same rate of pay until paid or until suit is filed, for a period of up to thirty (30) days.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For judgment in favor of Plaintiff and against Defendants;
2. For an award of compensatory damages in an amount to be proven at trial;
3. For penalties and wages under the California Labor Code;
4. For an award of punitive damages;
5. For pre-judgment and post-judgment interest on all damages awarded;
6. For reasonable attorneys' fees;
7. For costs of suit incurred; and
8. For such other and further relief as the Court may deem just and proper, and/or any other recovery or matter allowed under law.

DATED: October 16, 2019

SKIERMONT DERBY LLP

By: 

PAUL B. DERBY
HAJIR ARDEBILI
DREW E. ANDERSON

Attorneys for Plaintiff
DAVID KUCK

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in this action.

DATED: October 16, 2019

SKIERMONT DERBY LLP

By: 

PAUL B. DERBY
HAJIR ARDEBILI
DREW E. ANDERSON

Attorneys for Plaintiff
DAVID KUCK